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REMARKS

Reconsideration and reexamination of the application are requested. Claims 1, 8, and 11-15 are amended. The amendments are supported by the original disclosure, including original claims 4 and 5 and the original drawings. Claims 4, 5, 9 and 10 are canceled herein without prejudice or disclaimer. Claims 1, 3, 6-8 and 11-15 are pending.

Improper final rejection

The rejection has improperly been made final. According to MPEP 706.07(a), an action cannot be made final when the Examiner introduces a new grounds of rejection that is not necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement under 37 CFR 1.97(c). Applicants did not amend the claims in the response filed on July 27, 2006, nor were the new references cited by the Examiner submitted by the Applicants in an information disclosure statement. In addition, page 2 of the latest action acknowledges that a new grounds of rejection is being applied. The fact that Applicant's prior arguments were found convincing is not sufficient justification to make a new grounds of rejection and make the rejection final. Applicants should be provided full opportunity to respond to the newly cited references, including making claim amendments if necessary.

Therefore, the action should not be made final. Withdrawal of the finality of the action and entry of the claim amendments presented herein are requested.

Claim rejections

Claims 1 and 3-15 are rejected under 35 USC 103(a) as being unpatentable over Omori (US 4,561,519) in view of Bennett et al. (US 4,802,684).

Independent claims 1, 8, 12 and 14 recite that a straddling space is formed between a front side of the seat and a rear side of the fuel tank and above the right and left upper frames to permit a rider to straddle the vehicle. Because of the layout of the upper frames, the air intake system, the fuel tank, the seat and the rear cylinder, it is possible to provide the straddling space. With this construction, the upper frames are effectively lowered to expand the space for a rider to straddle over.

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Omori and Bennett do not teach or suggest a straddling space that is formed between a front side of the seat and a rear side of the fuel tank and above the right and left upper frames to permit a rider to straddle the vehicle.

In Omori, the rear of the fuel tank 34 abuts against the front of the seat 36. There is no straddling space that is formed between the tank 34 and the seat 36, and above right and left upper frames. Bennett fails to teach or suggest such a feature.

In addition, the rear cylinder of Omori is not between the right and left upper frames as recited in claims 1, 8, 12 and 14. The rear cylinder of Omori is underneath the frame members 26 as is clearly shown in Figure 2. No portion of the rear cylinder extends upwardly enough to permit it to be characterized as being between the frame members 26.

With respect to the air intake system, Applicants traverse the assertion that positioning the air cleaners in the space between the engine cylinders of Omori is conventional. Omori teaches that better positioning of the cushion on the motorcycle allows other components, such as the air cleaner, to be positioned behind the engine (column 1, lines 39-45). Thus, Omori actually teaches positioning the air cleaner behind the engine. The rejection makes repeated reference to column 1, lines 42-45. However, this passage, although mentioning an air cleaner, clearly indicates that the air cleaner is positioned behind the engine.

In addition, Omori does not teach that the tubes 30 are coupled to a front of the crankcase of the engine 12, as recited in claims 1 and 8. The rejection asserts that the tubes 30 are coupled to the crankcase, but there is no evidence from Omori that this is actually the case. In fact, Figure 2 actually shows that there is a gap between the tube 30 and the crankcase structure which would indicate that the tubes 30 are not coupled to the front of the crankcase.

In addition, Omori does not teach or suggest a diamond type frame as recited in claims 1, 8, 13 and 14. A diamond type frame is defined by Applicants as "a frame with the engine suspended as a stressed member rather than cradled underneath by tubes of the frame." (See page 9, lines 28-29). In Omori, portions of the frame 10 extend underneath

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the engine 12 so as to cradle the engine. The engine 12 in Omori is not suspended as a stressed member as is required by the meaning of "diamond type frame".

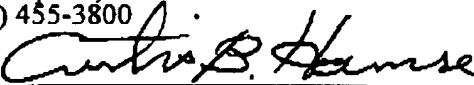
For at least these reasons, the claims are patentable over Omori and Bennett.

In view of the above, early issuance of a notice of allowance is solicited. Any questions regarding this communication can be directed to the undersigned attorney, Curtis B. Hamre, Reg. No. 29,165 at (612) 455-3802.

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